

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-50**

### **PROCEDURAL HISTORY**

On April 9, 2024, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Bethel School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On April 9, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on April 10, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On May 3, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on May 6, 2024. OSPI invited the Parent to reply.

On May 16, 2024, OSPI received the Parent's reply. OSPI forwarded that reply to the District on May 29, 2024.

On May 29, 2024, OSPI requested that the District provide additional information, and the District provided the requested information on May 30, 2024. OSPI forwarded the information to the Parent on May 31, 2024.

On May 31, 2024, the Parent provided additional information to OSPI. OSPI forwarded the information to the District on June 4, 2024.

OSPI considered the information provided by the Parent and the District as part of its investigation.

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation period, which began with the start of the 2023–24 school year per the allegations in the complaint. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

### **ISSUES**

1. Beginning with the start of the 2023–24 school year, did the District follow proper special education discipline procedures in relation to the Student?
2. Beginning with the start of the 2023–24 school year, did the District follow proper special education procedures for responding to potential bullying the Student was subjected to, specifically, did bullying prevent the Student from accessing a free appropriate public education (FAPE)?

3. Beginning with the spring of 2024, did the individualized education program (IEP) team follow proper procedures for responding to any change in need resulting from the Student's disability in relation to paraeducator services, occupational therapy services, and extended school year (ESY) services?

### **LEGAL STANDARDS**

Disciplinary Removals – No Change of Placement: School districts may remove a student eligible for special education who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days to the extent those alternatives are applied to students without disabilities and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement under WAC 392-172A-05155. 34 CFR §300.530(b)(1); WAC 392-172A-05145(2).

Bullying and Harassment: Bullying is defined as aggression used within a relationship where the aggressor has more or real perceived power than the target, and the aggression is repeated or has the potential to be repeated. In addition, under the IDEA, school districts have an obligation to ensure that students who are the targets of bullying continue to receive a free appropriate public education (FAPE) in accordance with the student's IEP. *Dear Colleague Letter*, 61 IDELR 263 (OSERS/OSEP Aug. 20, 2013).

Harassment or bullying that adversely affects that student's education, may result in a denial of FAPE. A denial of FAPE occurs when, taking into consideration the student's unique characteristics, it may be fairly said that a school district did not provide the student an opportunity to obtain some progress from the program it has offered. *Ojai Unified School District v. Jackson*, 4 F.3d 1467 (9<sup>th</sup> Cir. 1993), *cert. denied*, 115 S. Ct. 90 (1994). Harassment and bullying of a student eligible for special education that prevents the student from receiving meaningful educational benefit constitutes a denial of a FAPE that districts must remedy. As part of its response, the district should convene an IEP team meeting to determine whether additional or different services are necessary and must revise the student's IEP accordingly. *Dear Colleague Letter*, 61 IDELR 263 (OSERS/OSEP Aug. 20, 2013).

Basis for IEP Team Decisions: Generally speaking, an IEP team's decisions must be based on a student's needs resulting from that student's disability. *See generally* WAC 392-172A-03090(1); *see also* WAC 392-172A-03110. An IEP team should base its decisions on appropriate programming for a student on sufficient, relevant data on the student's needs resulting from the student's disability. *See, e.g.*, WAC 392-172A-03020(g); *see also, generally*, WAC 392-172A-03090.

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and

supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

Extended School Year Services: Extended school year (ESY) services means services meeting state standards provided to a student eligible for special education that are beyond the normal school year, in accordance with the student's IEP, and at no cost to the parents of the student. School districts must ensure that ESY services are available when necessary to provide a FAPE to a student eligible for special education services. ESY services must be provided only if the student's IEP team determines, based on the student's needs, that they are necessary in order for the student to receive a FAPE. The purpose of ESY services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors. School districts must develop criteria for determining the need for ESY services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based on their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need. For purposes of ESY, "regression" means significant loss of skills or behaviors if educational services are interrupted in any area specified in the IEP. "Recoupment" means the recovery of skills or behaviors to a level demonstrated before interruption of services specified in the IEP. 34 CFR §300.106; WAC 392-172A-02020. A student's IEP team must decide whether the student requires ESY services and the amount of those services. In most cases, a multi-factored determination would be appropriate, but for some children, it may be appropriate to make the determination of whether the child is eligible for ESY services based only on one criterion or factor. *Letter to Given*, 39 IDELR 129 (OSEP 2003).

## **FINDINGS OF FACT**

### **Background Information**

1. The District's group of qualified professionals completed a reevaluation of the Student on March 9, 2023. The March 2023 reevaluation report found the Student eligible under the category of communication disorders, and recommended the Student be provided with specially designed instruction (SDI) in communication, related services of occupational therapy (OT), and supplementary aids and services of gross motor.
2. The Student's IEP team developed a new annual IEP for the Student on March 9, 2023. The March 2023 IEP included annual goals in communication (expressive language – increase use of picture card accuracy from 20% accuracy to 50% accuracy), fine motor 1 (manual coordination – increase appropriate word spacing from 65% accuracy to 80% accuracy), and fine motor 2 (visual motor – increase line placement and letter sizing from 55% accuracy to 80% accuracy).

The March 2023 IEP provided the Student with the following SDI and related services in a *special education setting*:

- Communication: 30 minutes a week (to be provided by a speech language pathologist (SLP))
- OT: 30 minutes a week (to be provided by an occupational therapist)

The March 2023 IEP provided the Student with the following supplementary aids and services in a *special education setting*:

- Gross Motor: 15 minutes a month (to be provided by a physical therapist (PT))

The March 2023 IEP did not provide the Student with an extended school year (ESY) services.

### **2023–24 School Year**

3. At the start of the 2023–24 school year, the Student was eligible for special education services under the category of “communication disordered”<sup>1</sup>, was in the fourth grade, attended a District elementary school, and the Student’s March 2023 IEP was in effect.
4. The District’s 2023–24 school year began on September 30, 2023.
5. As OSPI understands the Student’s “Attendance Profile”, included in the District’s response, the Student was absent approximately 22 times during the 2023–24 school year.
6. According to the Parent, on September 11, 2023, the Student was assigned “community service as discipline.”
7. According to the District:  
[The elementary school the Student attended at the start of the 2023-2024 school year] uses community service as a form of discipline, or more specifically, as a restorative practice, and it might involve such things as wiping tables, or picking up garbage on the playground. Students are given a choice of tasks, and the Student preferred sweeping outside.  
  
The District’s records show that the incident in question occurred on October 4, 2023. The records show that the incident involved both boys arguing over rocks and then throwing them at each other.
8. On November 3, 2023, the District implemented a “no contact order” between the Student and a peer (student A). The District also established a schedule whereby the Student and student A would “alternate their rock-collecting days for the next week.”
9. According to the District’s 2023–24 calendar, the first semester ended on January 30, 2024.

The District’s response included a “Grades” document, which showed the following in relation to the Student’s academic work, as of the end of the first semester. Each academic area had subsets of skills, and each subset received a score between 1 and 4, with 4 representing

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<sup>1</sup> Phrasing per the March 9, 2023 reevaluation report.

“advanced” ability and 1 representing “below basic” ability. Average scores for each major academic area follow:

- Math: 1.33.
- Reading: 2.27.<sup>2</sup>
- Science: 2.
- Social Studies: 2.
- Work Habits: 2.
- Characteristics of Successful Learners: 2.33.
- Art: 2.
- Library: 3.
- Music: 2.
- PE: 3.
- Technology: 3.

10. The Student’s behavioral tracker included the following entry for February 28, 2024:

Student approached three students on the playground and spit on student A. Student A told the Student to walk away and the Student rushed towards his legs and attempted to push him down. A [staff person on] recess duty observed the Student hit student A. While the recess duty [staff person] was walking all four students in, the Student continued to attempt to spit on student A.

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Parent contacted...and [a] suspension [was] issued. Parents requested to remove [the] suspension and it was removed...Parents stated they did not know the ‘no contact’ [order] went both ways.

11. On February 29, 2024, the principal emailed several individuals, including the Parent, stating, in part, “Student will be provided an alternate setting during first recess.”

In an email exchange later that day, the Parent expressed approval with the principal’s suggestion that the Student be provided recess in the second-grade classroom.

12. Regarding the Student accessing recess in the second-grade classroom, the District provided the following clarifying information:

- “The second grade teacher had second grade students in her classroom, usually doing small group intervention-related activities under her supervision. The Student came alone and would play computer games or other quiet activities.”
- Recess was 30 minutes each day.
- “Once the Student enrolled in [the District’s online/hybrid program]...he no longer physically attended [the] elementary school. He went to the second grade classroom during recess from March 1, 2023 to March 22, 2024.”

13. According to the District, “the Parents voluntarily...kept Student home” on February 29, 2024, and on that day, “the Student had access to homework and services consistent with other students without disabilities, and he was granted accommodations consistent with his IEP.”

During the investigation, the District further stated:

Every student has a Zearn account and an Epic account to access online homework. Each student has their log-in information in a binder that they can access at any point. The teacher also sent home log-in cards with each student at the beginning of the school year.

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<sup>2</sup> The Grades document read, in part, “Your child is reading below grade level.”

The teacher also regularly tells parents that if they lose the card, to email or message her via the class dojo messaging system, and she will send the student's credentials via email and make another copy.

In their reply, the Parents, though, stated, "The District's inaccurate response detailing [we] voluntarily withheld the Student from school on February 29, 2024, and had access to homework and services consistent with other students without disabilities is inaccurate."

14. The Student's IEP team met on March 5, 2024.

Regarding the March 5, 2024 IEP meeting, the Parent's complaint request read, in part:

We requested a paraeducator, additional OT, and even summer school for Student...The team declined all our requests. The principal and SLP stated Student does not meet the 'criteria' for [a paraeducator]...The principal [stated] Student would need to have an educational evaluation to be done [before the team could consider whether Student needed] additional help from a paraeducator...More OT [was] also requested since Parents did not believe 30 minutes a week...was adequate.

The District's response read, in part:

The IEP team did not refuse to change or propose a change to the student's education program [during the March 5, 2024 IEP meeting], but rather, the agreement was to promptly evaluate the Student in all areas of suspected disability, including academics...and OT, to determine what the Student may qualify for beyond his current services. Therefore, [the Parent's requests] were not yet ripe for consideration.

15. The Student's IEP team developed a new annual IEP for the Student on March 5, 2024. The March 2024 IEP included annual goals in communication (expressive language – increase use of picture card accuracy from 40% accuracy to 80% accuracy), and fine motor 1 (visual motor – increase line placement and letter sizing from 64% accuracy to 80% accuracy).

The March 2024 IEP provided the Student with the following SDI and related services in a *special education setting*:

- Communication: 30 minutes a week (to be provided by an SLP)
- OT: 120 minutes a month (to be provided by an occupational therapist)

The March 2024 IEP provided the Student with the following supplementary aids and services in a *special education setting*:

- Gross Motor: 15 minutes a month (to be provided by a PT)

The March 2024 IEP did not provide the Student with ESY services. The IEP also read, in part:

Class teacher's input: My biggest concern for [Student] is that he has an extremely short attention span...When asked to do something I have to ask 4, 5, 6 times before he will even get materials out, he has a lot of unfinished learning and it shows, however, he also does not put the effort forth unless I am sitting next to him working with him one on one and I, unfortunately, cannot do that every day for every assignment as he is not the only one in need of assistance. In ELA specifically, I have great concerns for his writing. He simply cannot write efficiently or on task. It takes him legitimately triple the amount of time to

complete a writing assignment than it does the rest of the class and 99% of the time the assignment is off-topic.

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There is also concern in his social-emotional learning. He does not seem to be aware of how those around him are feeling or acting and will often times yell at his peers and try to hit them. I don't think he fully grasps social cues and how to interact with those who are his own age.

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Communication: Student can ask appropriate questions improving expressive language at 40% of the time, he needs to be at 80%.

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Fine Motor: Upon review of data from previous OT sessions, [Student's] accuracy for line placement ranges from 41% to 89%, his accuracy for letter size ranges between 47% and 87%, and he appears to continue to struggle with word spacing with accuracy ranging from 25% to 75%...It should be noted that writing is not a preferred activity for [Student] which likely impacts his attention/effort during these tasks.

16. Regarding the early March 2024 IEP, the Parent's complaint request stated, "[It] largely carried over the same basic goals and objectives from year-to-year, indicating Student was failing to make meaningful progress."
17. Around 10 am on March 5, 2024, the principal emailed the Student's IEP team, stating, in part, "During the [IEP] meeting, Parents...requested that an evaluation be started to see if other supports and needed and can be provided." The OT responded, stating: "I also would like to do some additional OT testing."  
  
Midday on March 5, 2024, the SLP emailed the Parent a "final copy of the Student's IEP."
18. According to emails, dated March 7 and 18, 2024, the Parent appeared to report the Student was successfully completing various OT assignments in the home setting.
19. On March 11, 2024, the Parent wrote, "[We are] uncomfortable with any District staff member performing this evaluation. If this evaluation is required for Student to receive assistance from a paraeducator, [then] we are requesting [it] be completed by a qualified professional such as those at the [hospital] therapy unit."
20. On March 18, 2024, the District provided the Parent with a copy of its independent educational evaluation (IEE) policy, as well as a list of potential private evaluators to be used during the same.
21. Between March 19 and 26, 2024, the District filed a due process hearing request, asserting its March 2023 evaluation was sufficiently comprehensive.
22. At some point between March 26 and early April 2024, the Student began receiving instruction via the District's online/hybrid program.

23. According to the District, "At [the online/hybrid program], the Student is mostly online, but receives some services in-person. However, those services are now provided at [a different] elementary school."
24. According to emails, on April 1, 2024: the District agreed to drop the due process hearing request it had filed to defend the March 2023 reevaluation of the Student and agreed that District personnel that did not work at the Student's elementary school would complete the reevaluation of the Student. They agreed that the Parent would "send...consent for reevaluation in the areas of reading, writing, math, OT, [physical therapy], [and] [communication/speech]"; and once completed, the "[re]evaluation will be used to determine possible IEP revisions."
25. An April 2, 2023 prior written notice read, in part, "Student qualifies for IEP services in the areas of [communication/speech], OT, and [physical therapy]. Current data in those qualifying areas has not warranted [the] need for 1:1 paraeducator support for Student to be able to access his education at this time."
26. On April 2, 2024, the Parent signed written consent for the Student to be reevaluated in the following areas: review of existing data; academic; gross motor; medical-physical; communication; and fine motor.
27. An April 11, 2024 letter from the local children's hospital stated the Student had a diagnosis of progressive muscle degeneration and weakness.
28. Emails suggest the Student was administered physical therapy testing on April 23, 2024.
29. The District stated the reevaluation of the Student was completed on May 20, 2024.
30. The District stated an IEP meeting was scheduled for June 5, 2024.
31. The District's response read, in part:

The District recognizes that the Student has had repeated conflicts during the 2023-2024 school year with the student with whom there is a no-contact order – [student A]. The District made extensive efforts to prevent interaction between these two students, although they share similar interests and often want to be around each other. Playground supervisors were all aware of the no-contact arrangement and watched to ensure that the students stayed apart. However, the two students each in turn violated the no-contact provisions throughout the school year by approaching each other on different occasions, throwing rocks at each other, dumping rocks on each other, and in the case of the Student, tackling and spitting on the other student. This was not a one-sided situation, and the Student was often observed to be the aggressor.

Further, the District has been cognizant of issues with other students as well. With small exception, these were single incidents that included different people in various settings. In every instance where the District had knowledge of an incident, District staff and administrators addressed the situation with both students, investigated, and timely applied disciplinary consequences as appropriate to the severity of the misconduct in question.



Additionally, it should be noted that in many instances, the Student was found to be the aggressor, or to have at least been mutually involved in misconduct. The Student has been found to struggle in his interactions with other students and to successfully navigate peer-to-peer conflicts.

32. The documentation provided to OSPI during this investigation showed, in part:

- The Student was involved in approximately 12 behavioral incidents.
  - Five of the 12 incidents involved the Student and student A. Of these five incidents: the Student initiated one incident; student A initiated two incidents; and for two incidents, it was unclear which student initiated it.
  - Seven of the 12 incidents involved the Student and other students. Of these seven incidents: the Student initiated four incidents; and other students initiated three incidents.<sup>3</sup>
- Most all the behavioral incidents took place during recess.
- Not all behavioral incidents could be characterized as physical interactions. For example: on February 2, 2023, the Student “put up his middle finger to [his] peers”; and on May 11, 2023, the “Student got mad [during] PE – the Student thought another student was cheating and the Student destroyed PE property...a ball.”
- While animus underlaid some of the interactions, it does not appear that animus underlaid all interactions. For example, on February 8, 2024, “Student and [another student] were playing ‘keep away’ with volleyballs. [The other student] ran towards Student and picked him up off the ground and then dropped him. [The other student] admitted he did not know why he did it.”

## CONCLUSIONS

**Issue 1: Special Education Discipline Procedures** – The Parent alleged the District did not follow proper special education discipline procedures during the 2023–24 school year.

School districts may remove a student eligible for special education who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days to the extent those alternatives are applied to students without disabilities and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement.

Here, there is no indication the District administered disciplinary suspensions to the Student during the 2023–24 school year which represented, in total, more than ten school days. For example, on February 28, 2024, the Student was initially assigned a short-term suspension for an altercation that took place during recess that day. The District stated said short-term suspension was revoked at the Parent’s request, and the behavioral tracker does read, in part, “Parents requested to remove [the] suspension and it was removed.” The Parent, though, stated it was untrue that they voluntarily kept the Student home on February 29, 2024. Even if, for analytical

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<sup>3</sup> For at least one incident involving another student, that other student initiated the behavioral incident, but the Student clearly escalated it: on February 26, 2024, “The Student was playing with a stick at recess and another student took it from the Student and threw it over the fence. The Student responded by hitting them in the face with another stick. The Student thought the other students were going to be mean to him, so he hurt them before they had the chance.”

purposes, February 29, 2024 was treated as a one-day suspension, this does not represent a violation of the special education discipline regulations. OSPI does not find a violation.

**Issue 2: Response to Alleged Bullying – Ability to Access FAPE** – The Parent alleged the Student was bullied during the 2023–24 school year, that this impacted the Student’s ability to access FAPE, and that the District not properly respond to the same.

Bullying is defined as aggression used within a relationship where the aggressor has more or real perceived power than the target, and the aggression is repeated or has the potential to be repeated. Bullying that adversely affects that student’s education may result in a denial of FAPE. A denial of FAPE occurs when, taking into consideration the student’s unique characteristics, it may be fairly said that a school district did not provide the student an opportunity to obtain some progress from the program it has offered. As part of its response, the district should convene an IEP team meeting to determine whether additional or different services are necessary and must revise the student’s IEP accordingly.

Here, it is not clear the Student was subjected to bullying that meets the legal definition during the 2023–24 school year. For example, while the Student was involved in numerous behavioral incidents throughout the school year, these incidents were initiated by other students and at times the Student. The documentation provided to OSPI showed, in part, that the Student was involved in approximately 12 behavioral incidents:

- Five of the 12 incidents involved the Student and student A. Of these five incidents: the Student initiated one incident; student A initiated two incidences; and, for two incidents, it was unclear which student initiated it.
- Seven of the 12 incidents involved the Student and other students. Of these seven incidents: the Student initiated four incidents; and other students initiated three incidents.<sup>4</sup>

Despite the behavior incidents and peer conflict, the Student appears to have made some progress on the program offered by the District. For example, the March 5, 2024 IEP showed the Student had made some progress on the Student’s March 2023 communication goal and fine motor 2 goal.

Finally, the District did take several steps in response to the Parent’s concerns regarding bullying: on November 3, 2023, the District initiated a ‘no contact’ order between the Student and student A; between March 1 and 22, 2024, the District worked with the Parent in crafting the solution of providing the Student with recess in an alternate setting, as many of the behavioral incidents were taking place in the traditional recess setting; and the Student’s IEP team met in early March 2024, and discussed, in part, the Parent’s concerns regarding alleged bullying.

Considering the foregoing, OSPI does not find a violation of the IDEA. It is not clear the Student was bullied, and the District took steps to respond to the Parent’s concerns regarding the same.

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<sup>4</sup> For at least one incident involving another student, that other student initiated the behavioral incident, but the Student escalated the situation.

While the behavior incidents and peer conflict may not meet the definition of bullying, the documentation provided to OSPI showed the Student may have had a need resulting from the Student's disability in social-emotional, behavior, and possibly adaptive and/or executive functioning needs. The March 2023 IEP did not provide the Student with any services in these areas; however, during the 2023–24 school year, the Student was involved in behavioral incidents,<sup>5</sup> which showed a potential new need. In a March 22, 2024 email, the Parent reported the Student was in a constant state of "hypervigilance" and in the community complaint request, the Parent reported the Student had severe anxiety that often prevented the Student from attending school and/or the anxiety made the transition to school in the morning particularly difficult. Additionally, the March 2024 IEP stated the Student had significant difficulty staying on task, listening to direction, and understanding "social cues and how to interact with those who are his own age." OSPI highlights these matters for the IEP team to consider during its June 5, 2024 meeting, as it reviews the reevaluation results.

**Issue 3: IEP Development** – The Parent alleged the District did not follow proper IEP development procedures in responding to any potential change in need resulting from the Student's disability in relation to the need for paraeducator services, OT, and ESY.

An IEP team's decisions must be based on a student's needs resulting from that student's disability. An IEP team should base its decisions on appropriate programming for a student on sufficient, relevant data on the student's needs resulting from the student's disability. Additionally, the parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child.

Here, the Parent made the request for paraeducator services, increased OT, and ESY at the early March 2024 IEP meeting and the District's position was that additional data—to be gathered during a future reevaluation—was needed before the IEP team could properly consider these requests. In mid-March 2024, the Parent requested an IEE; between March 19 and 26, 2024, the District filed a due process hearing request, asserting its March 2023 evaluation was sufficiently comprehensive; and on April 1, 2024, the District agreed to drop the due process hearing request. On April 2, 2024, the Parent provided written consent for a reevaluation in certain areas; the reevaluation was completed on May 20, 2024; and the IEP team will be meeting on June 5, 2024, to consider the same and develop a new IEP for the Student.

Regarding the Student's needs resulting from the Student's disability in OT, as of early March 2024, the record was somewhat mixed. For example, there was some indication the Student's needs in this area had not regressed: the documentation included emails dated March 7 and 18, 2024, wherein the Parent appeared to report the Student was successfully completing various OT

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<sup>5</sup> Some of these incidents were particularly notable, in terms of whether a potential social-emotional or behavioral need was demonstrated. For example, on January 12, 2024, "in between transitioning from indoor lunch, the Student tried to stab a peer with a pencil", and on February 26, 2024, "The Student was playing with a stick at recess and another student took it from the Student and threw it over the fence. The Student responded by hitting them in the face with another stick. The Student thought the other students were going to be mean to him, so he hurt them before they had the chance."

assignments in the home setting. There was also, though, some indication the Student's needs in this area were not clear to the IEP team. For example, the early March 2024 IEP noted the Student's performance in the OT-related areas of line placement, letter size, and word spacing varied significantly each time those areas were assessed, that these were non-preferred tasks for which the Student demonstrated a challenge in staying on task for, and the Student's true ability in these areas was not known. There was also some documentation showing the Student did have an increased need in this area. For example, on March 5, 2024, the OT authored an email that read, in part, "I also would like to do some additional OT testing." On the basis of the foregoing, it was reasonable for the IEP team to determine it needed to conduct a reevaluation to gather more data before it could properly determine whether the Student required increased OT services. OSPI does not find a violation.

Regarding ESY, OSPI notes the March 2023 IEP did not provide the Student with ESY. The purpose of ESY services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors. School districts must develop criteria for determining the need for ESY services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based on their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need. For purposes of ESY, 'regression' means significant loss of skills or behaviors if educational services are interrupted in any area specified in the IEP. 'Recoupment' means the recovery of skills or behaviors to a level demonstrated before interruption of services specified in the IEP.

Here, the documentation provided to OSPI did not fully speak to whether the Student had experienced, or was likely to experience, regression during periods when school was not in session. Regarding the Student's general progress on IEP goals and academic coursework, OSPI notes: the March 5, 2024 IEP showed the Student had made some progress on the Student's March 2023 communication goal and fine motor 2 goal; though, as noted above, the exact nature of the Student's ability in OT appeared to be somewhat unclear; and the grades document showed the Student was struggling in the academic areas of math, reading, science, and social studies. While generally an IEP team should not need to conduct a full reevaluation to determine a need for ESY, rather a team should have progress data that should help show whether there is regression or a lack of recoupment. However, on the basis of the foregoing, it was reasonable for the IEP team to determine it needed to conduct a reevaluation to gather more data before it could properly determine whether the Student required ESY. OSPI does not find a violation.

Regarding the Parent's request for paraeducator services, as discussed above, there is documentation that supports the Student had an unmet need or an emerging need in behavior. For example, during the 2023–24 school year, the Student was involved in behavioral incidents, which frequently took place during the recess period with his fourth-grade class. In a March 22, 2024 email, the Parent reported the Student was in a constant state of "hypervigilance"; in the community complaint request, the Parent reported the Student had severe anxiety that often prevented the Student from attending school and/or said anxiety made the transition to school in the morning particularly difficult. And the March 2024 IEP noted, "Student has an extremely

short attention span”, often needed near-constant redirection, and did not “fully grasp social cues and [know] how to interact with those who are his own age.” It does not appear that the Student’s 2023 reevaluation indicated a need in behavior or social emotional, and thus conducting a reevaluation is not improper in order to assess the Students current or emerging needs.

However, given all of this, the IEP team’s decision to postpone a response to the Parent’s request for paraeducator services prior to the completion of a reevaluation was improper and the IEP should have considered whether there were interim positive behavior strategies, supports, and services that could have been provided while the reevaluation was in progress. For example, the IEP team could have considered whether behavior supports could be provided through accommodations in the IEP, whether a behavioral intervention plan (BIP) could have been developed, whether a functional behavioral assessment (FBA) was warranted, and even whether some amount of paraeducator, or additional adult support should have been trialed (potentially as part of the reevaluation). Thus, OSPI finds that the District did not timely provide other behavior supports and strategies while it conducted a reevaluation and represents a violation of the IDEA.

As a remedy, the District will be required to provide OSPI with all documentation related to its determinations regarding the potential need for paraeducator services and other behavior supports, services, and strategies at the June 5, 2024 IEP meeting. Additionally, the District will be required to conduct training for certain personnel regarding how an IEP team may respond to a potential change in need in behavior resulting from a student’s disability.

### **CORRECTIVE ACTIONS**

By or before **June 21, 2024, September 13, 2024, and October 4, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **IEP Meeting Documentation**

By or before **June 21, 2024**, the District will be required to provide OSPI with all documentation related to its determinations regarding the potential need for paraeducator services and other behavior supports, services, and strategies discussed at the June 5, 2024 IEP meeting.

#### **DISTRICT SPECIFIC:**

##### **Training**

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other trainer), will co-develop and jointly conduct training on the below topics. The District will provide the trainer with a copy of this decision, SECC 24-50.

The following District staff will receive training: District special education administrators and the following at the Student’s school: principal, assistant principal, special education certified staff (teachers), at the first school the Student attended during the 2023–24 school year. The training

will cover the following topic: how an IEP team may respond to a potential change in need in behavior resulting from a student's disability. The training will include examples.

By or before **June 21, 2024**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **September 13, 2024**, the District will provide OSPI with the training materials for OSPI's review, input, and approval. OSPI will approve the materials or provide comments by September 20, 2024.

By **October 4, 2024**, the District will conduct the training regarding the topics raised in this complaint decision.

By **October 4, 2024**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

The District will submit a completed copy of the Corrective Action Plan (CAP) matrix, documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this 7th day of June, 2024

Dr. Tania May  
Assistant Superintendent of Special Education  
PO BOX 47200  
Olympia, WA 98504-7200

**THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT**

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)